

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF )  
SKAGIT RIVER STEEL SUPPLY )  
& JUNK COMPANY, )

Appellant, )

v. )

NORTHWEST AIR POLLUTION )  
AUTHORITY, )

Respondent. )

PCHB No. 844

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

THIS MATTER, the appeal of a \$50.00 civil penalty for an alleged open burning violation having come on regularly for an informal hearing before Board member Walt Woodward on the 6th day of October, 1975, at Mount Vernon, Washington, and appellant Skagit River Steel Supply and Junk Company appearing through its president, Leo P. Urbick, and respondent Northwest Air Pollution Authority appearing through its attorney, Glenn Reed, and the Board having considered the sworn testimony, the exhibits, records and files herein and the presiding officer having entered on the 14th day of October, 1975, a proposed

1 Findings of Fact, Conclusions of Law and Order, and the Board having  
2 served said proposed Findings, Conclusions and Order upon all parties  
3 herein by certified mail, return receipt requested and twenty days having  
4 elapsed from said service; and

5 The Board having received no exceptions to said proposed Findings,  
6 Conclusions and Order and the Board being fully advised in the premises;  
7 now therefore,

8 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed  
9 Findings of Fact, Conclusions of Law and Order dated the 14th day of  
10 October, 1975, and incorporated by this reference herein and attached  
11 hereto as Exhibit A, are adopted and hereby entered as the Board's  
12 Final Findings of Fact, Conclusions of Law and Order herein.

13 DATED this 19 day of December, 1975.

14 POLLUTION CONTROL HEARINGS BOARD

16 CHRIS SMITH, Chairman

17 W. A. GISSBERG  
18 W. A. GISSBERG, Member

19 Walt Woodward  
20 WALT WOODWARD, Member

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NORTHWEST AIR POLLUTION )  
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Respondent. )

PCHE No. 844

FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

This matter, the appeal of a \$50 civil penalty for an alleged open burning violation of respondent's regulations, came before the Pollution Control Hearings Board (Walt Woodward, presiding officer) at an informal hearing in the council chambers of the City Hall, Mount Vernon, on October 6, 1975.

Appellant was represented by its president, Leo P. Urbick; respondent appeared through Glenn Reed. Jennifer Rowland, Olympia court reporter, recorded the proceedings.

Witnesses were sworn and testified. Exhibits were admitted.

Exhibit A

1 From testimony heard, exhibits examined and record reviewed, the  
2 Pollution Control Hearings Board makes these

3 FINDINGS OF FACT

4 I.

5 Section 131.1 of respondent's regulations authorizes respondent's  
6 control officer to serve a written notice of violation for any infraction  
7 of the regulations. Section 131.21 requires alleged violators to respond  
8 in writing concerning corrective action within ten days of the notice of  
9 violation. Section 133.1 authorizes respondent to levy a civil penalty  
10 of not more than \$250 for any violation of the regulations. Section  
11 501.22 makes it unlawful to cause or allow an outdoor fire containing  
12 rubber products.

13 II.

14 This matter involves an incident at appellant's place of business  
15 at 1265 S. Anacortes Street, Burlington, Skagit County, in the late  
16 forenoon of April 9, 1975. This disparate testimony was given:

17 An inspector on respondent's staff said he saw from one-quarter  
18 mile away a plume of black smoke of about 60 percent opacity rising  
19 300 feet in the air from appellant's property. He said the smoke came  
20 from a burning automobile tire and two pieces of burning automobile  
21 rubber hose apparently ignited by one of appellant's workmen who was  
22 cutting an automobile body for scrap metal. The inspector said he saw  
23 no fire-fighting equipment and that the workman stepped on the burning  
24 material when the inspector said the fire should be extinguished.

25 The workman said he saw no fire until the inspector pointed out  
26 that a small rubber grommet which had just fallen to the ground from

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CONCLUSIONS OF LAW AND ORDER

1 the car body was smoldering. The workman said the fire was no more  
2 than two inches square, that its smoke was dispersed after rising one  
3 foot and that he was able to extinguish the fire by stepping on the  
4 grommet. He denied an automobile tire and rubber hoses were ignited.  
5 He said adequate fire-fighting equipment was quickly obtainable from a  
6 hose connected to a water standpipe 20 feet away.

7 Appellant, who was not present at the time and place of the above  
8 incident, said his employees are instructed to remove tires before  
9 cutting car bodies; he said the tires are hauled to a dump.

10 From all of the above, the Pollution Control Hearings Board finds  
11 as facts that (a) a small outdoor fire of rubber material burned for a  
12 short period of time at appellant's property at 1265 South Anacortes  
13 Street, Burlington, Skagit County, on April 9, 1975; (b) fire-fighting  
14 equipment was readily available.

### 15 III.

16 In connection with the above incident, respondent served on  
17 appellant Notice of Violation No. 509, citing Section 501.22 of  
18 respondent's regulations, and Notice of Imposition of Penalty dated  
19 April 17, 1975, in the amount of \$250, \$200 of which was suspended.  
20 The \$50 imposition is the subject of this appeal.

### 21 IV.

22 On April 11, 1975, appellant, in writing to respondent, met the  
23 terms of Section 131.21 of respondent's regulations.

### 24 V.

25 Resolution No. 11 of respondent's board of directors recommends  
26 for the first written open burning notice of violation that a

27 FINDINGS OF FACT,  
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"commercial-industrial" violator be given a civil penalty ranging from \$25 suspended to \$250 not suspended "depending on magnitude of violation."

VI.

Notice of Violation No. 509 was the first such notice served on appellant by respondent. Appellant has been in business in Burlington for 17 years. Respondent has no other record of violation against appellant.

VII.

Any Conclusion of Law hereinafter recited that is deemed to be a Finding of Fact is adopted herewith as same.

From these facts, the Pollution Control Hearings Board comes to these

CONCLUSIONS OF LAW

I.

Appellant was in violation of Section 501.22 of respondent's regulations as cited in Notice of Violation No. 509.

II.

While the Notice of Imposition of Penalty dated April 17, 1975 is in an amount which is one-fifth of the maximum allowable amount under Section 133.1 of respondent's regulations, further leniency is indicated because the "magnitude of violation" was minimal, because fire-fighting equipment was readily available and because no previous record of violation stands against appellant which has been in business in the area for almost two decades.

FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

1 III.

2 Any Finding of Fact herein that is deemed to be a Conclusion of  
3 Law is adopted herewith as same.

4 Therefore, the Pollution Control Hearings Board issues this

5 ORDER

6 The appeal is denied, but the \$50 penalty imposition is suspended  
7 pending no similar violation for a period of six months from the date  
8 this Order becomes final.

9 DONE at Lacey, Washington, this 14th day of October, 1975.

10 Walt Woodward  
11 WALT WOODWARD, Presiding Officer  
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